

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ELSA CARDALDA-SÁNCHEZ,

Plaintiff,

Civil No. 08-1819 (JAF)

V.

UNIVERSIDAD CARLOS ALBIZU,

Defendant.

OPINION AND ORDER

Plaintiff, Elsa Cardalda-Sánchez, brings this action against Defendant Universidad Carlos Albizu ("the University") alleging discrimination on the basis of religion, disability, and national origin, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000 et seq.; the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 21101 et seq.; Puerto Rico Law No. 100, of June 30, 1959, 29 L.P.R.A. § 146 (2001); Law No. 80, of May 30, 1976, 29 L.P.R.A. § 185a (2006); Law No. 44, of July 24, 1985, 1 L.P.R.A. § 501 (2008); and Law No. 115, of December 19, 1991 ("Law 115"), 29 L.P.R.A. § 194a (2001). (Docket No. 1.) Defendant moves to stay or abstain under the doctrine established in Col. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976) ("Colorado River"). (Docket No. 11.) Plaintiff opposes (Docket No. 20), Defendant replies (Docket No. 23), and Plaintiff surreplies (Docket No. 26).

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1 **I.**2 **Factual and Procedural History**3 Unless otherwise noted, we derive the following factual
4 summary from the complaint. (Docket No. 1.)5 Plaintiff has a doctorate in psychology. Although born in
6 New York, she considers herself Cuban, as both of her parents are
7 from Cuba. She suffers from severe back ailments and spasms as
8 a result of several herniated disks. Defendant is a Puerto Rico
9 corporation that offers college and post-graduate degrees in
10 psychology.11 Defendant hired Plaintiff as an associate professor in 1998,
12 under a one-year contract. Upon completion of the year, Plaintiff
13 received a favorable evaluation, as a result of which her
14 contract was renewed for an additional three-year term, beginning
15 in the Fall of 1999. After the three-year term passed, Plaintiff
16 received another favorable evaluation, and her contract was
17 renewed for a five-year term. Typically, Defendant hires faculty
18 members based on a one-year contract, followed by a three-year
19 contract, followed by a five-year contract, followed by a
20 renewable contract for ten years. All contract renewals are
21 contingent on the faculty member receiving favorable evaluations.

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1 On October 10, 2006, Defendant's Human Resources Director
2 notified Plaintiff that the University's chancellor, Lourdes
3 García, had filed an internal complaint against Plaintiff. On
4 October 16, 2006, in anticipation of the termination of her five-
5 year contract in August 2007, Plaintiff requested a promotion
6 from associate professor to full professor. On October 17, 2006,
7 Plaintiff filed a complaint at the Anti-Discrimination Unit of
8 the Puerto Rico Department of Labor ("ADU"), alleging that
9 Defendant had discriminated against her and subjected her to a
10 hostile work environment on the basis of her disability,
11 religious beliefs, and national origin. Specifically, she claimed
12 that Defendant harassed her and made arbitrary demands of her at
13 work; provided her with inferior working conditions because of
14 her disability, religion, or national origin; failed to comply
15 with University regulations and procedures regarding Plaintiff's
16 evaluations, promotion, and contract renewal; denied her
17 employment benefits; mocked the way she practiced her religion;
18 failed to accommodate her disability; and intended to terminate
19 her employment. On November 2, 2006, Plaintiff filed an
20 administrative charge against García based on employment
21 harassment and other complaints.

22 As a result of the two internal complaints, the one filed by
23 García against Plaintiff and the one filed by Plaintiff against

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1 García, the University began an internal administrative response.
2 The University scheduled an administrative hearing for early
3 December 2006, but delayed and rescheduled it several times.

4 On February 27, 2007, the ADU held a hearing on Plaintiff's
5 claims. Plaintiff expressed her wish to proceed through an
6 alternative mediation process. However, Defendant stated that
7 it had decided not to renew Plaintiff's contract. On April 27,
8 2007, the Human Resources Director informed Plaintiff that her
9 internal complaint against García had been dismissed because
10 Plaintiff had chosen to proceed with her claims at the ADU.

11 On May 10, 2007, the University held a hearing regarding
12 García's complaint against Plaintiff, with attorney Juan Arroyo
13 Elicier ("Arroyo") as the examining officer. At the hearing,
14 Plaintiff objected to Arroyo's position as examining officer,
15 because he had previously served as an attorney for the
16 University and Plaintiff. As a result of these concerns, Arroyo
17 recused himself, and the hearing ended. On May 14, 2007, the
18 University notified Plaintiff that García's complaint against her
19 was being closed without prejudice.

20 On May 15, 2007, Plaintiff submitted a settlement proposal
21 to Defendant. The next day, the University President, Jorge
22 González, informed Plaintiff that her contract would not be
23 renewed in August 2007. The University has a regulation stating

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that "[f]aculty search committees have primary responsibility for evaluating the credentials of applicants for Faculty positions . . . [w]hen [employment] decisions are reached, the Faculty member should receive written explanation and has a right to appeal for reconsideration." However, González did not explain why Plaintiff's contract would not be renewed, and Plaintiff was never evaluated for the renewal of her contract or the promotion she requested. After receiving the letter of nonrenewal, Plaintiff submitted an appeal to the University's Board of Trustees. This appeal was ultimately denied, and Plaintiff had to leave her position as a professor at the University when her contract expired on August 27, 2007.

On May 18, 2007, Plaintiff filed a complaint in the Puerto Rico Court of First Instance, requesting injunctive relief under Law 115 and Law No. 2, of October 17, 1961 ("Law 2") 32 L.P.R.A. §§ 3118-32 (2004). (Docket No. 16-2.) Law 115 provides that "[n]o employer may discharge, threaten, or discriminate against an employee regarding the terms, conditions, compensation, location, benefits or privileges of the employment should the employee offer or attempt to offer, verbally or in writing, any testimony, expression or information before a legislative, administrative or judicial forum in Puerto Rico." 29 L.P.R.A. § 194a. Law 115 further states that successful plaintiffs may obtain economic and

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1 emotional damages and reinstatement in their jobs. Law 2 provides
2 employees with a process for the expedited disposition of labor
3 claims. 32 L.P.R.A. §§ 3118-32. In the Commonwealth complaint,
4 Plaintiff did not assert claims under Title VII, the ADA, or
5 Puerto Rico antidiscrimination laws. (Docket No. 16-2.) On July
6 3, 2007, the Court of First Instance dismissed the request for
7 injunctive relief as premature. (Docket No. 16-3.) It is unclear
8 from the record whether Plaintiff appealed this judgment and
9 whether it became final.

10 At some point, Plaintiff amended her discrimination
11 complaint before the ADU to include allegations that Defendant
12 decided not to renew Plaintiff's contract and took other adverse
13 employment actions against her in retaliation for Plaintiff's
14 initial filing with the ADU. Plaintiff also requested permission
15 from the ADU to continue with her claims in court. On April 29,
16 2008, the ADU sent Plaintiff a right-to-sue letter.

17 On July 27, 2008, Plaintiff filed the present complaint in
18 federal district court against Defendant. (Docket No. 1.)
19 Defendant moved to dismiss or stay on February 18, 2009. (Docket
20 No. 12.) Plaintiff opposed on March 31, 2009 (Docket No. 20),
21 Defendant replied on April 14, 2009 (Docket No. 23), and
22 Plaintiff surreplied on April 27, 2009 (Docket No. 26).

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II.

Standard Under Rule 12(b)(6)

A defendant may move to dismiss an action against him, based solely on the complaint, for the plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In assessing this motion, we "accept[] all well-pleaded facts as true, and we draw all reasonable inferences in favor of the [plaintiff]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962, 971 (1st Cir. 1993).

The complaint must demonstrate "a plausible entitlement to relief" by alleging facts that directly or inferentially support each material element of some legal claim. Gagliardi v. Sullivan, 513 F.3d 301, 305 (1st Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 559 (2007)). Typically, "specific facts are not necessary; the statements need only 'give the defendants fair notice of [the claim] and the grounds upon which it rests.'"
Thomas v. Rhode Island, 542 F.3d 944, 948 (1st Cir. 2008) (quoting Erickson v. Pardus, 551 U.S. 89 (2007)).

III.

Analysis

Defendant moves for Colorado River abstention and moves to dismiss the claim for injunctive relief under Rule 12(b)(6) as

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1 barred by res judicata. (Docket No. 11.) We address these
2 arguments in turn.

3 **A. Colorado River Abstention**

4 Defendant argues that we should abstain or stay under the
5 Colorado River doctrine because Plaintiff has an ongoing case in
6 Commonwealth court stemming from the same underlying set of
7 facts. (Docket No. 11.)

8 Colorado River abstention permits us to "abstain from
9 hearing a case due to the presence of a concurrent state
10 proceeding for reasons of wise judicial administration." United
11 States v. Fairway Capital Corp., 483 F.3d 34, 40 (1st Cir. 2007)
12 (citing Colorado River, 424 U.S. at 819) (internal quotation
13 marks omitted). "Generally, as between state and federal courts,
14 the rule is that 'the pendency of an action in state court is no
15 bar to proceedings concerning the same matter in the [f]ederal
16 court having jurisdiction'" Colorado River, 424 U.S. at
17 817 (quoting McClellan v. Carland, 217 U.S. 268, 282 (1910)).
18 Colorado River abstention applies only in limited circumstances;
19 we consider eight factors to determine whether to decline
20 jurisdiction in a particular case:

21 (1) whether either court has assumed
22 jurisdiction over a res; (2) the
23 inconvenience of the federal forum; (3) the
24 desirability of avoiding piecemeal
25 litigation; (4) the order in which the forums

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1 obtained jurisdiction; (5) whether state or
2 federal law controls; (6) the adequacy of the
3 state forum to protect the parties'
4 interests; (7) the vexatious or contrived
5 nature of the federal claim; and (8) respect
6 for the principles underlying removal
7 jurisdiction.

8 Fairway Capital, 483 F.3d at 40 (quoting KPS & Assocs. v. Designs
9 by FMC, Inc., 318 F.3d 1, 10 (1st Cir. 2003)). No single factor
10 is determinative; instead, we must balance our "obligation to
11 exercise jurisdiction" with the factors that weigh against that
12 exercise. Colorado River, 424 U.S. at 819.

13 Here, the only factor that arguably weighs in favor of
14 abstention is the fact that the Commonwealth action was filed
15 first, as Plaintiff filed her complaint in the Puerto Rico Court
16 of First Instance on May 18, 2007, and filed the present action
17 on July 27, 2008. (Docket Nos. 1, 16-2.) However, Plaintiff
18 presents a reasonable explanation for why she filed in Puerto
19 Rico court first: Her Commonwealth charges were an effort to seek
20 protections immediately available at Puerto Rico law, and had she
21 attempted, in May 2007, to file her charges together in federal
22 court, her discrimination charges would have been subject to
23 dismissal for failure to exhaust. (Docket No. 20); see 42 U.S.C.
24 § 2000e-5(e)(1), (f)(1) (requiring Title VII plaintiff to file
25 administrative charge prior to initiating action in federal

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1 district court); 42 U.S.C. § 12117 (applying Title VII exhaustion
2 requirements to ADA cases). We, therefore, find that this factor
3 weighs in favor of abstention, although only weakly.

4 As to the remaining factors, although the Puerto Rico court
5 would have been an adequate forum for Plaintiff's federal claims,
6 this does not weigh in favor of abstention. See Fairway Capital,
7 483 F.3d at 43 (quoting Bethlehem Contracting Co. v.
8 Lehrer/McGovern, Inc., 800 F.2d 325, 328 (2d Cir. 1986))
9 reasoning that "the possibility that the state court proceeding
10 might adequately protect the interests of the parties is not
11 enough to justify the district court's deference to the state
12 action") (internal quotation marks omitted)). The other factors
13 counsel in favor of our retaining jurisdiction. Accordingly, we
14 decline to dismiss or stay the complaint under the Colorado
15 River doctrine. See 424 U.S. at 817-19.

16 **B. Res Judicata**

17 Defendant argues that res judicata bars Plaintiff's request
18 for injunctive relief under Law 115 because the Puerto Rico Court
19 of First Instance denied that claim in its July 3, 2007, opinion.
20 (Docket No. 11.)

21 Because we "accord a Puerto Rico judgment the same
22 preclusive effect as would a Puerto Rico court, see 28 U.S.C.

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1 § 1738, we apply Puerto Rico res judicata law.” Gener-Villar v.
2 Adcom Group, Inc., 417 F.3d 201, 205 (1st Cir. 2005). Puerto Rico
3 law precludes litigation of claims “that were, or could have
4 been, brought in a previous action for which judgment has been
5 rendered,” where there is “perfect identity between the things,
6 causes and person of the litigants.” Barreto-Rosa v. Varona-
7 Méndez, 470 F.3d 42, 45 (1st Cir. 2006) (quoting 31 L.P.R.A.
8 § 3343 (1990)) (internal quotation marks omitted). The doctrine
9 requires a prior judgment on the merits that is final and
10 unappealable. Cruz v. Melecio, 204 F.3d 14, 20 (1st Cir. 2000)
11 (“[A Puerto Rico] court judgment cannot be accorded preclusive
12 effect until all available appeals have been exhausted.”). Under
13 Puerto Rico law, claim preclusion attaches to a second action
14 even if the plaintiff’s first action was dismissed as premature.
15 See Robles Meléndez v. Merck & Co., 770 F. Supp. 71, 76 (D.P.R.
16 1991).

17 On July 3, 2007, the Puerto Rico Court of First Instance
18 issued a judgment dismissing Plaintiff’s request for injunctive
19 relief as premature. (Docket No. 16-2.) This decision would
20 appear to preclude further litigation of the same claim if it
21 were final and unappealable. See Robles Meléndez, 770 F. Supp.
22 at 76. Defendant asserts, but does not provide the documentation

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1 to prove, that Plaintiff appealed the denial of her Law 115 claim
2 before the Puerto Rico Supreme Court, which denied the appeal.
3 (Docket No. 11.) The present complaint is not clear as to the
4 factual basis of Plaintiff's Law 115 claim, or, for that matter,
5 any of her other claims. (See Docket No. 1.) Therefore, we cannot
6 determine whether Plaintiff is indeed attempting to relitigate
7 the claim already denied as premature by the Puerto Rico Supreme
8 Court.

9 Accordingly, we order Defendant to show cause, **on or before**
10 **June 26, 2009**, as to why we should not deny its motion to dismiss
11 on res-judicata grounds. Defendant must supply documentation
12 demonstrating that the judgment in Plaintiff's Puerto Rico case
13 was final and unappealable. We also grant Plaintiff **until**
14 **June 26, 2009**, to amend her complaint to state the factual basis
15 underlying each claim so we can decide the res-judicata issue and
16 any further motions.

17 **IV.**18 **Conclusion**

19 In accordance with the foregoing, we hereby **DENY IN PART**
20 Defendant's motion to dismiss (Docket No. 11). We **DENY**
21 Defendant's motion to dismiss or stay under Colorado River. We
22 also **ORDER** Defendant to **SHOW CAUSE**, **on or before June 26, 2009**,

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1 as to why we should not deny its motion to dismiss on res-
2 judicata grounds. To prevail, Defendant must supply documentation
3 demonstrating that the judgment in Plaintiff's Puerto Rico case
4 was final and unappealable. We also **ORDER** Plaintiff to amend her
5 complaint to state the factual basis underlying each claim **on or**
6 **before June 26, 2009.**

7 **IT IS SO ORDERED.**

8 San Juan, Puerto Rico, this 10th day of June, 2009.

9 s/José Antonio Fusté
10 JOSE ANTONIO FUSTE
11 Chief U.S. District Judge